IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3596 of 1991

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHANUDAS RATILAL PATEL - Petitioner(s)
Versus
STATE OF GUJ & 1 - Respondent(s)

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Appearance :
MR DIPAK C RAVAL for Petitioner
NOTICE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 23/08/2006

ORAL JUDGMENT

1.This petition challenges the order dated 4th

February, 1991 passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, in the purported exercise of powers under Section 211 of the Bombay Land Revenue Code (the Code), whereby the order dated 18th March, 1985 passed by the Resettlement & Special Land Acquisition Officer, Ukai Scheme, granting lands admeasuring 40 x 40 metres bearing survey No.44 of Fulwadi area of Village Kukarmunda, Taluka Nizar, Dist. Surat, in favour of the petitioner for the purpose of setting up a touring talkie, has been set aside.

2. The facts giving rise to the present petition are that the petitioner, who is a project affected person under the Ukai Scheme, had, on 13th March, 1985, made an application before the Resettlement and Special Land Acquisition Officer, Ukai Scheme (Resettlement Commissioner), requesting for grant of land situated in the gamtal of Village Kukarmunda for the purpose of establishing a cinema thereon. Along with his application, the petitioner had produced a Certificate of the Gram Panchayat, Fulwadi, certifying that the petitioner was a project affected person, as well as a resolution of the said Gram Panchayat, resolving that the lands specified therein be granted to the

petitioner for the purpose of running a touring talkie, subject to the approval of the Resettlement and Land Acquisition Officer, Songadh.

2.1Pursuant to the aforesaid application, the Resettlement Commissioner caused necessary inquiry to be made and by his order dated 18th March, 1985, as an exception, granted the lands as requested by the petitioner on permanent basis. The Resettlement Commissioner has recorded that the petitioner has requested for land forming part of survey No.44 situated in the gamtal of Village Kukarmunda (Fulwadi) which was lying unused for the last 11 years. It was noted that the village people have no objection if the said lands are allotted to the petitioner; that granting the lands in favour of the petitioner would not cause any hindrance to the public; there was no cinema house situated within a distance of 10 Kms from the village, hence, despite the fact that the village had a sizable population, no entertainment in the form of cinema was available to the village people. It was also noted that, in the new settlement, various facilities had been provided, and lands have been reserved for various purposes, however, no land has been reserved for the purpose of cinema. The Resettlement Commissioner

observed that, as the lands are situated at distance from the village, where there is no day to day movement of the public at large; no public building, godown, temples, Balwadi, school, high school, hospital etc. are situated in the vicinity; therefore, the village people have no objection if land situated in such a remote area is granted to the petitioner and the village panchayat has also passed a resolution to that effect.

2.2 Pursuant to the said order, the petitioner paid the amount as directed by the said order, whereupon his name was entered in the revenue record as occupant of the said land. The petitioner, thereafter, applied for permission for construction of semi-permanent cinema as well as obtained a licence under the Bombay Cinema Regulations Act, 1953 and the Rules made thereunder.

2.3 After a lapse of a period of three years from the date of the aforesaid order of the Resettlement Commissioner, the Additional Chief Secretary (Appeals), Revenue Department (Revisional Authority) issued a show cause notice dated 18th April, 1988 calling upon the petitioner to show cause as to why the said order of the Resettlement & Land Acquisition Officer, Songadh should not be set aside. In

response to the show cause notice, the petitioner submitted his reply in May, 1988. By the impugned order dated 4th February, 1991, the Revisional Authority set aside the aforesaid order dated 18th March, 1985. Being aggrieved, the writ petitioner has moved the present petition.

3. Heard Mr.Dipak Raval, learned advocate for the petitioner and Ms.Reeta Chandarana, learned Assistant Government Pleader for the respondents.

4. Mr.Raval, learned advocate for the petitioner submitted that the Resettlement Commissioner was authorized to grant land for the purpose of resettlement of affected persons under the Government Notification dated 17th May, 1968. That, in exercise of the powers vested in him under the said Notification, the Resettlement Commissioner had granted land to the petitioner for the purpose of setting up a cinema. It was submitted that the land granted by the Resettlement Commissioner in exercise of powers under the aforesaid Notification does not fall within the purview of the Bombay Land Revenue Code, hence, the impugned order passed by the respondent No.2 is without jurisdiction.

4.1 It was argued that, in any case, admittedly, the petitioner is a project affected person. The lands of new village Kukarmunda (Fulwadi) were acquired only for the purpose of resettlement of the affected villagers and exclusive discretion and power are given to the Resettlement Commissioner. Hence, the impugned order holding that the Resettlement Commissioner had no authority to grant land for the purpose of establishing a cinema, is contrary to the aforesaid Government Notification.

4.2 It was further submitted that it is well settled that even if power is vested in the Government to cancel the orders passed by the Resettlement Commissioner, the same ought to have been exercised within a reasonable time. It was pointed out that the land was granted in the year 1985, thereafter various competent authorities of the Government had considered the grant and on the basis of the said grant, given permission for construction of permanent cinema under the provisions of the Bombay Cinema Regulations Act, 1953. It was submitted that, while granting a No Objection Certificate under the Bombay Cinema Regulations Act, 1953, the Collector is required to ascertain as to whether the applicant has a right upon the land on which

he wants to construct the cinema. It was submitted that, after considering the order of grant, No Objection Certificate was granted. It was submitted that, in the circumstances, the order of the Resettlement Commissioner was within the knowledge of the State authorities, hence, the exercise of powers of revision after a period of three years could not be said to be within a reasonable time. It was emphatically urged that the impugned order was bad on the ground of inordinate delay in initiation of proceedings, acquiescence, as well as being beyond the jurisdiction of the revisional authority.

4.3 In support of his contentions, the learned advocate for the petitioner has placed reliance upon the following decisions :

(i) The decision of the Apex Court in the case of *State of Gujarat v. Patel Raghav Natha*, X GLR 992;

(ii) The decision of the Apex Court in the case of *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim,* (1997)6 SCC 71;

(iii) The decision of this Court in *Evergreen Apartment Co-op. Housing Society v. Special Secretary, Revenue Department, Gujarat State*,

XXXII (1) GLR 113, and

(iv) The decision of this Court in *Bhanabhai Morarbhai Solanki v. State of Gujarat*, XXXV(1) GLR 822.

5. The learned Assistant Government Pleader Mrs.Chandarana supported the order passed by the revisional authority. It was submitted that lands which had been acquired for the purpose of re-settling the people affected by the Ukai Scheme and were reserved for specific purposes under the Resettlement Scheme, cannot be granted for a purpose other than that for which they are specifically assigned. The subject lands which formed part of the gamtal could be used only for the public purpose of providing residential facilities to the project affected persons; that such lands could not be allotted on an individual basis for commercial purpose. It was submitted that, as per the policy of the State Government, the land can be granted for commercial purposes only by way of auction, hence, the order of Resettlement Commissioner granting land for the purpose of setting up a cinema without putting the land to auction was beyond the bounds of his authority and as such, had been rightly set aside by the revisional authority.

6. As can be seen from the impugned order of the revisional authority, it was the case of the petitioner before the said authority that, before granting the land in his favour, necessary procedure had been duly followed, and that, nothing had been done surreptitiously. It had been submitted that the transaction in question had been entered in the record of rights and had been duly certified by the Mamlatdar, Nizar. That possession of the subject lands had been handed over to the petitioner on 11th April, 1985, and that, a period of more than three years had elapsed since then. In the meanwhile, the petitioner had put up construction on the said land, obtained electrical connection, installed a projector etc. and expended an amount of Rs.1,50,000/- for the aforesaid purposes. It was urged that the petitioner's family consisted of 20 members whose livelihood depended on the aforesaid business. That the petitioner being a project affected person, had been granted the said lands as a part of their resettlement. However, the revisional authority was of the view that the lands of village Kukarmunda had been acquired for the purpose of providing facilities to the Ukai Project affected persons, and that the land

was required to be demarcated into plots and used for the public purpose of providing facilities to the project affected persons. That such plots could not be granted to persons other than project affected persons for individual purposes or for commercial purposes. That despite the aforesaid position, the Resettlement Commissioner had granted the lands in favour of the petitioner for the non-agricultural purpose of setting up a cinema. It was noted that, before passing the order of grant, proper inquiry had not been carried out. It was observed that, as per the policy of the State Government, land cannot be granted for commercial purpose except by way of auction. The revisional authority was of the view that the Resettlement Commissioner had not ascertained the extent of the limits of his authority; that as per the State policy, in such cases, the power to grant land vested in the State Government. The revisional authority, therefore, held that the order passed by the Resettlement Commissioner was beyond his authority; that an order without authority was a nullity; that the High Court had held that no period of limitation was applicable for setting aside a null and void order; that the order of the Resettlement Commissioner being beyond his authority was

non-est and as such, was required to be set aside. Accordingly, the order dated 18th March, 1985 passed by the Resettlement Commissioner, was set aside.

7. The petitioner has specifically averred in the petition that he had requested for a copy of the Settlement Scheme, however, the same was not supplied to the petitioner. It is further averred that, the petitioner has learnt and he is told by the Resettlement Commissioner that the allotment of land made to the petitioner for the construction of the cinema is exclusively within his power and is legal and proper. It is specifically stated in the petition that, under the Scheme, the Re-Settlement Commissioner is empowered not only to grant land for residential and agricultural purposes, but also for establishment of markets, schools, hospitals, shops and other public utilities, occupations and services which also include entertainment and therefore, it was within the powers of the Resettlement Commissioner to grant a plot of land to the project affected person for carrying on his business by way of establishing and setting up quasi-permanent cinema.

8. Notice was issued on this petition on 21st

May, 1991, thereafter rule was issued on 8th December, 1993. However, till the hearing of the petition, no counter has been filed on behalf of the respondents controverting the aforesaid averments made in the petition. The Notification dated 17th May, 1968, upon which reliance has been placed by the petitioner to state that the Re-settlement Commissioner had the power to allow subject lands in favour of the petitioner has not been placed on record, in the circumstances, an adverse inference can be drawn against the State authorities.

9. From the facts recorded hereinabove, it is apparent that though the subject lands had been granted in favour of the petitioner by an order dated 18th March, 1985 of the Resettlement Commissioner, *suo motu* proceedings taking the said order in review have been initiated by a show cause notice dated 18th April, 1988 i.e. after a period of more than three years from the date of the said order. During the interregnum, the petitioner has expended considerable funds for establishing a cinema thereon. Moreover, various permissions have been sought from different authorities under different statutes including the No Objection Certificate obtained from the concerned Collector. In the circumstances, it cannot

be said that the authorities were not aware of the grant of land in favour of the petitioner by the Resettlement Commissioner. The revisional authority, in the impugned order, observed that the order of the Resettlement Commissioner was beyond his authority. That an order beyond the bounds of authority was a nullity, hence, as per the law laid down by the High Court, no limitation would be applicable for setting aside an order which is a nullity. That an order beyond authority was *ipso facto non est*. However, no reasons are set out in the said order as to why proceedings were initiated after such an inordinate delay. Besides, pursuant to the show cause notice, after the petitioner filed his reply in May 1988 and hearing was fixed on 12th October, 1988, the impugned order has been passed on 17th January, 1991 after a considerably long period of more than two years. Thus, the concerned authority has not only initiated proceedings after a considerable delay, but has also taken its own time in passing the impugned order, unmindful of the fact that considering the nature of the grant, equities are bound to be created in favour of the petitioner.

10.The petitioner had rightly contended before

the revisional authority that the lands had been granted in favour of the petitioner after following due procedure, and that, nothing had been done surreptitiously or fraudulently. In the circumstances, no fault can be found at the petitioner's end insofar as the grant of land is concerned. As regards the authority of the Resettlement Commissioner to grant lands for the purpose of cinema, the revisional authority has observed that lands under the Resettlement Scheme cannot be allotted for commercial purposes. However, the aforesaid proposition does not appear to be correct, in that, it is specifically stated in the petition that the resettlement of new township includes the establishment of markets, schools, hospitals, shops and other public utility occupations. That lands have been granted to many persons for establishing shops, flour-mills, medical dispensaries and other household utility occupations. The aforesaid averments in the petition have not been controverted by the respondents. In the circumstances, when lands have in fact been granted for commercial purposes to other persons, no fault can be found with the order of the Resettlement Commissioner in granting lands to the petitioner, who is admittedly a project affected person, for the purpose of

setting up a permanent cinema as a means of livelihood.

11. The revisional authority has emphasized that lands can be granted for non-commercial purpose only by way of auction, and that, under the policy of the State Government, the authority for granting such lands is vested in the State Government. However, no such policy of the State Government has been brought on record, nor is any notification stating the limits of the powers of the Resettlement Commissioner while granting land to project affected persons has been brought on record. In the circumstances, the contention of the respondents that the order passed by the Resettlement Commissioner was beyond the bounds of his authority does not merit acceptance. Moreover, apart from the fact that there does not appear to be any infirmity in the order of the Resettlement Commissioner granting land in favour of the petitioner for the purpose of setting up a cinema, the impugned order of the revisional authority is required to be set aside on the sole ground that the said proceedings have been initiated after an inordinate delay of more than three years. It is settled legal position, as held by the Apex Court as well as this Court in the decisions cited

hereinabove that even if the statute does not prescribe any limitation, action has to be taken within a reasonable time. The aforesaid period of three years can under no circumstances be said to be a reasonable time. In the circumstances, the impugned order dated 4th February, 1991 cannot be sustained.

12. For the foregoing reasons, the petition succeeds and is hereby allowed. The impugned order dated 4th February, 1991 passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[HARSHA DEVANI, J.]

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